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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/505,915

Filing Date: February 17, 2000

Appellant(s): KATZ, RONALD A.

Reena Kuyper
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 11, 2009 appealing from the
Office action mailed March 21, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

1. Appeal Pending in U.S. Application Serial No. 09/371,212 to Katz.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,799,156	SHAVIT ET AL.	1-1989
5,576,951	LOCKWOOD	11-1996

(9) Grounds of Rejection

The following grounds of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17-23, 25-40, 42-64, 66-116, 121, 123-205 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shavit et al. (US 4,799,156, hereinafter "Shavit") in view of Lockwood (US 5,576,951) for the same reasons given in the last Office action and repeated below.

Shavit discloses an electronic commercial transaction system (interactive market management system) for selectively enabling communication between members of plural groups (buyers 82, suppliers 84, distributors 83, etc.), comprising:

an interface (communications interface 79 permits on-line computer access by remote buyers 82 with market participants, such as sellers 83, 84, 86, 88, 94, 96, etc.; col. 5, line 39.- col. 6, line 51);

an input system (personal computers 62, 64 include keypads which allow remote buyers to designate the particular goods or service desired via a request for quotation (RFQ); col. 25, lines 28-33; col. 5, lines 43-47; col. 6, lines 39-51);

a memory (system 50 maintains user profiles for every user, col. 9, lines 52-68, and stores and logs every operation for each user ID, col. 11, lines 22-29);

whereby the control system subsequently electronically outputs by electronic mail to an indicated email address for electronic email communication relating to the interested buyer, an indication regarding said area of interest (system 50 provides email messages to each user, including bids in response to requests for particular goods or services input by the user, promotions, and other information of particular interest to buyers; col. 11, lines 52 – col. 12, line 26; col. 13, lines 25-27; col. 18, lines 44-49; col. 20, lines 2-39).

Shavit differs from the claims in that it does not specify the control system processing the input data to isolate at least one select vendor site from a plurality of vendor sites based on the area of commercial interest designated by the buyer and an indication including select video data presentations. However, Lockwood teaches the desirability of having a central processor 222 select an appropriate vendor-supplied data source associated with the customer's request, col. 18, lines 51-54; col. 19, lines 52-53; col. 20, lines 36-39, for output to the customer as a high-resolution audio-visual presentation; col. 18, lines 9-56; col. 19, lines 13-24, 52-57) such that it would have been obvious to an artisan of ordinary skill to incorporate such vendor selection, as taught by Lockwood, within the system of Shavit in order to provide buyers with a more efficient means of selecting goods and services from a plurality of vendors by providing customized audio/video presentations based on the buyer's area of interest. In this way, the buyer need not manually select each distributor from which information is desired.

(10) Response to Argument

With regard to the rejection of claims 17-23, 25-40, 42-64, 66-116, 121, 123-205 under 35 USC 103(a) as being unpatentable over Shavit et al. in view of Lockwood, Appellant argues that "the two patents that are combined fall under entirely distinct classifications" and "are directed to technologies that are distinct and therefore, not obvious for a combination as proposed by the Examiner." However, both Shavit and Lockwood are from the same field of endeavor, that is, electronic commercial transactions systems which provide communication between vendors and buyers. Moreover, under the current U.S. Classification schedule, both Shavit et al. and Lockwood have been classified under 705/26.

Appellant argues that "the respective teachings in Shavit (of the buyer selecting the vendor and indicating the vendor to the system in order to transact business) and in Lockwood (of the data processing center isolating the vendor) contradicts and teaches away from each other." However, both systems address obtaining quotations from different vendors. In Shavit, a buyer must identify the vendors from which quotations are requested. Lockwood saves a buyer time by automatically obtaining quotations from several vendors without requiring a buyer to specify particular vendors (col. 2, lines 8-30; col. 5, lines 45-57). In this way, the buyer need not manually select each distributor from which information is desired but can easily receive information from a plurality of vendors rather than be restricted to vendors already known to the buyer.

Appellant argues that Lockwood (U.S. Pat. No. 5,576,951) "has a filing date of March 16, 1994, after the effective filing date of the present application, and it is a continuation-in-part of earlier filed applications." This is not entirely correct. Lockwood

is also a continuation of the combination of Ser. No. 08/116,654, filed September 3, 1993 and Ser. No. 08/096,610, filed July 23, 1993. Both of these applications have filing dates which are clearly earlier than the effective filing of the Appellant's present application.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). For instance, Appellant argues that "the operation of a user isolating the vendor in Shavit, falls outside the scope of the appealed claims, which explicitly include the operation of isolating a particular vendor or seller." However, it was Lockwood, not Shavit, which was relied upon to teach isolating "at least one select vendor site from a plurality of vendor sites." Specifically, Lockwood teaches having a central data processing unit 22 select an appropriate vendor-supplied data source associated with a customer's request (col. 5, lines 37-55) for the purpose of allowing a user to obtain and compare quotations easily (col. 9, lines 26-30).

Appellant also argues that in Shavit, "sellers, no buyers, set or indicate prices, and thus, there are no purchase offers or proposals that include an indication of price from the buyer." However, in Lockwood, specifications indicated by the buyer include cost (col. 5, line 47). Lockwood further allows the buyer to specify any number of prerequisite details (col. 5, lines 45-64; col. 6, lines 36-65).

Appellant argues that Lockwood "clearly teaches that the tone or voice response system 221 receives the 'customer's selections' in 'audio signal form' and 'converts the signals to message' which are transmitted to the central processor 222 for selection of data sources. The claims on appeal here recite that the user creates and expresses the area of interest via a digital keypad, which recitation is also not taught by Lockwood." Again, the rejection was based on a combination of references, namely, Shavit and Lockwood. As indicated in the last Office action and repeated above, in Shavit, personal computers 62, 64 include keypads which allow remote buyers to designate the particular goods or service desired (col. 25, lines 28-33; col. 5, lines 43-47; col. 6, lines 39-51).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Stella L. Woo/

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